

# Draft responses to comments received, but not answered during Workshop I for Tentative Order 2001-193.

Note: If "Groupable" is checked, then the response is on the attached pages.

Section	Subsection	Specific Comment	Comment Response
		How would the results of the appeal of the San Diego Permit relate to the content of the new Orange County permit?	Groupable? If the appeal results in an order to change portions of the San Diego Permit (Order 2001-01) that are applicable to the proposed Orange County Permit (Tentative Order 2001-193), then appropriate changes
		In the draft Technical Report it states that the permit is very prescriptive which helps with repeated requests from the Permittees about what they should be doing in order to comply. If this is the case, why does the permit not include the 69, measurable proactive performance commitments that the Permittees proposed in the 2000 DAMP?	Groupable? The requirements contained in the Tentative Order represent the SDRWQCB's interpretation of what meets Maximum Extent Practicable (MEP). The Copermitees must address these minimum requirements in the Tentative Order to effectively meet MEP. Although the Tentative Order provides minimum requirements, the Copermitees have the discretion to address their priorities beyond (including the performance commitments) the Tentative Order.
		In order to use our limited resources wisely and better effect water quality improvements, the Copermitees, with stakeholder approval, have developed priorities that address significant water quality problems first. The Tentative Permit would not allow us to do that. Is it the staff's intention that we address all of our stormwater problems at once, and if so, is this practicable?	Groupable? The requirements contained in the Tentative Order represent the SDRWQCB's interpretation of what meets Maximum Extent Practicable (MEP). The Copermitees must address these minimum requirements in the Tentative order to effectively meet MEP. Although the Tentative Order provides minimum requirements, the Copermitees have the discretion to address their priorities beyond the Tentative Order.

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A		How do you propose to enforce requirements based on words such as minimize, maximize, etc?	<p>Groupable? Both the Federal Government and the State understand that some degree of impact is unavoidable, and thus seek to reduce discharges to the maximum extent practicable in order to minimize the short and long-term impacts of urban runoff on receiving water quality. The Tentative Order is designed to explain what our review of technical and economic data has determined is broadly feasible and also to provide the opportunity for each copermantee to develop a program that can reasonably be implemented pursuant to local conditions.</p> <p>The RWQCB will enforce the requirements of the Tentative Order based in part on the submitted Jurisdictional Urban Runoff Management Program Documents submitted by the Copermitees within 365 days of the adoption of the Tentative Order. In these documents, the Copermitees will propose BMPs and activities that constitute "minimum" or "maximum" BMPs or activities that satisfy the requirements of the Tentative Order.</p>
A	A	The Tentative Permit does not contain the mandatory BMP language of State Board Order 99-05. Does the staff intend to enforce the Discharge Prohibitions without regard to the iterative BMP process required by State Board Order 99-05?	<p>Groupable? The Tentative Permit does contain the mandatory language contained in State Board Order 99-05. State Board Order 99-05 required mandatory receiving water limitation language to be included in future municipal storm water permits. This mandatory language can be found in Tentative Order 2001-193 Section C. Staff intends to enforce all discharge prohibitions. However, the iterative BMP process required by State Board Order 99-05 is applicable to only those prohibitions regarding receiving water quality.</p>

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A	A.1, A.3	On what legal basis are discharges into municipal storm drains that might cause or threaten to cause pollution prohibited in Prohibitions A.1 and A.3?	<p>Groupable? Federal NPDES regulations 40 CFR 122.26(d)(2)(i)(A-D) require municipalities to have legal authority to control various discharges to their MS4. In addition, section 402(p)(3)(B)(ii) of the Clean Water Act states that municipalities shall "effectively prohibit non-stormwater discharges into the storm sewers." Furthermore NPDES regulations 40 CFR 122.26(d)(2)(iv)(A-D) require municipalities to control pollutants in urban runoff discharges to the municipal separate storm sewer system to the maximum extent practicable from urban land uses such as residential, commercial, municipal, industrial, and construction. On a more local level, the Water Quality Control Plan for the San Diego Basin (Basin Plan) prohibits discharges in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance.</p>
Attachment B	Attachment B	The permittees are being required to conduct Urban Stream Bioassessment Monitoring as Part of the Receiving Waters Monitoring Program to assess the insitu survival of aquatic life in receiving waters, why impose toxicity testing which is a laboratory assessment and less representative and costly?	<p>Groupable? Bioassessment is required since it provides direct measurement of the impact of cumulative, sub-lethal doses of pollutants or contaminants that may be below reasonable water chemistry detection limits, but that are not without biological affect. Bioassessment not only identifies that an impact has occurred, but also measures the affect of the impact and tracks recovery when control or restoration measures have been taken. Bioassessment does not, however, identify the source(s) of the impact. The toxicity testing requirement is necessary to identify the source(s) of impact to the benthic macroinvertebrate community to enable the Copermittees to adequately address these sources in their programs.</p>

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Attachment B	Attachment B	Why are the two monitoring programs split into two different attachments to the order, why not have one attachment or section that is the water quality monitoring program and have the Permittees update their current 99-04 plan to include some additional components?	Groupable? The Copermittees have been performing both dry weather monitoring and receiving waters monitoring under a common program (99-04 Plan). It is necessary, however, for dry weather monitoring to be performed at a jurisdictional level to ensure that both the inspection and monitoring efforts and the follow-up of suspected illicit discharges and illegal connections be integrated into its Jurisdictional Urban Runoff Management Program. Moreover, this program should be flexible and readily adaptable by municipal staff to changing needs and conditions identified in the MS4 system to better detect illicit discharges and illegal connections and to then conduct the follow-up investigations, source eliminations, education and enforcement actions as necessary
Attachment B	B.2	Why is the reporting period for the receiving waters monitoring program different than the reporting period for the rest of our reports? We currently submit one annual status report a year that includes all of our information including the water quality monitoring program. If the two reports reflect different reporting periods and schedules it adds significantly to the confusion and difficulty in evaluating the effectiveness of the programs.	Groupable? As outlined in Section Q, Table 6 "Submittal Summary," the annual reporting period for both the annual receiving waters monitoring program and the Jurisdictional Annual Report is concurrent, with both due on January 31, beginning in 2003. The Tentative Order does require, however, within 180 days of Permit adoption that includes a report of previous monitoring findings, provides recommendations for future monitoring, and describes a revised receiving waters monitoring program that reflects the requirements of the Order that will be ready to implement on June 1, 2002.
Attachment E	Attachment E.1	Why are the Permittees being required to implement a field screening program that they already conducted and completed during the first and second term permits? This program was discontinued due to the fact that the 89 stations that were sampled over the course of 6-7 years showed only a few incidents of chronic or acute illegal discharges. Instead the Permittees opted to revise this program element and tie it directly into the water pollution database in order to better find illegal discharges.	Groupable ✓

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Attachment E	Attachment E.1	Why is the Receiving Water Monitoring element (Attachment B) to be reported on as a separate report and the Dry Weather Monitoring element (Attachment E) to be reported on within the annual status report. This is very confusing. It is suggested that all water quality monitoring data and analyses be included in the annual status report in one section so that data is kept together and analyzed holistically instead of breaking it up into separate elements where some opportunities for more through analysis may, in fact be lost.	Groupable ✓
Attachment E	Attachment E.1	Attachment E states that the program needs to detect and eliminate illicit connections and illegal discharges. The Permittees have already completed an extensive program to eliminate illicit connections and are now in a maintenance mode whereby the connections are dealt with when that are found through the channel maintenance program. In fact, very few illicit connections are found and most of them are pool drains. This element should be revised and incorporated into our 99-04 plan to better reflect the current state of our program.	Groupable? ✓
Attachment E	Attachment E.1	Why does the tentative order continually refer to the fact that each Permittee must conduct monitoring? If they so choose the Permittees should be able to pool their resources in order to collectively benefit from a larger program.	Groupable? ✓

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B	B.2	If the Board staff think that the current water quality monitoring program needs to be revised, why not simply have the Permittees revise their existing 99-04 plan to include some additional comments? (The Permittees are already going to revise the program in 2002-2003 which would provide an opportune time to review the elements of the program).	Groupable? The Copermittees are directed in Attachment B to collaborate to review and revise as necessary the 99-04 Plan and to include additional specific monitoring components for Orange County within the San Diego Region. The Fact Sheet /Technical Report recognizes the advanced monitoring work and commitment of the Orange County Copermittees. It is necessary, however, that the Receiving Waters Monitoring Program implemented under the Tentative Order address each of the hydrologic units in the San Juan Watershed Management Area within Orange County and assess the compliance of the Copermittees with the Tentative Order as well as the impact of the discharge of urban runoff on the physical, chemical and biological integrity of these receiving waters.
B	B.4	Multiple municipalities may contract with a single Fire Authority for service. Would it not be more appropriate to require copermittees to require that their Fire Authority develop and implement a program for reducing pollutants training and maintenance activities?	Groupable? The Tentative Order does not discourage such an approach. The Copermittees are required to develop or require the development of a program (e.g. by a Fire Authority) to reduce the discharge of pollutants resulting from training and maintenance activities to the MEP.
C		Under the Tentative Order, does the discharge from an MS4 have to meet the water quality objectives for all beneficial uses of the receiving water? What about potential beneficial uses?	Groupable? The discharges from the MS4 cannot cause or contribute to an exceedance of water quality objectives. It is understood that receiving waters may assimilate some pollutants and the Basin Plan prohibitions implemented under this Tentative Order allow for dilution of contaminants in receiving waters. The Tentative Order is intended to protect both existing and potential beneficial uses of waterbodies as identified in the Basin Plan.
D	D.1.a	Is the Board trying to establish that the copermittees should have legal authority to enforce the General Permits? If so, this appears to be in conflict with Finding 22.	Groupable? ✓
D	D.1.b	Section D.1.b.2,4,5, and 6: These are all prohibited discharges which result from washing down exterior areas. Does the Board intend for commercial or industrial entities that need to perform these types of activities to obtain an NPDES permit from the Board?	Groupable? No, it is not the intent of the Regional Board to require those commercial activities to obtain individual NPDES permits. Federal regulations in 40 CFR 122.26 clearly state that municipal programs be developed to address discharges from particular commercial activities that may discharge into the municipal separate storm sewer system.

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D	D.1.g	Shouldn't control of contribution of pollutants occur as part of the TMDL process? Why not simply include the requirement that the copermittees will comply with	Groupable? As total maximum daily loads (TMDLs) are developed, it is likely that MS4s will have to participate in pollutant load reductions. Currently there are no TMDLs for the receiving waters that are targeted in this Tentative Order. In the meantime, the use of iterative BMPs in place of numeric effluent limits has been approved by the Ninth Circuit Court of Appeals ( <i>Defenders of Wildlife v. Browner</i> , 1999, 197 F. 3d 1035).
E.4	E.4.d.1.e	In Section E.4.d.1.e of Attachment E of the Dry Weather Monitoring list Enterococcus bacteria twice within the analytical monitoring parameters. What did you actually want? Fecal coliform, acute or chronic toxicity, or (dare I say) virus?	Groupable? The second Enterococcus should read Fecal Coliform. The Tentative Order will be revised to correct this error.
F	F	We have been implementing the DAMP since 1993 and have made several commitments to strengthen our stormwater quality programs. Why are you mandating that the DAMP only be used as an interim measure rather than as the basis for our jurisdictional programs?	Groupable? Many of the requirements proposed under this Permit are similar to those currently required under the existing municipal storm water permit (96-03) and are addressed to some extent in the DAMP. Based on a review of the Proposed DAMP that was submitted to the Regional Board in September 2000, however, we find that the DAMP will be inadequate to address urban runoff concerns, including the correction of impairments, at the jurisdictional level. While the DAMP serves to address concerns across the entire County, the new Permit requires copermittees to develop urban runoff management programs tailored specifically to the land uses and waterbodies within their jurisdictions.
F.1	F.1.b.2.a.vii	Why is the environmentally sensitive area added back as SUSMP category when SWRCB deleted it as already sufficiently regulated?	Groupable? The SWRCB, in Order No. 2000-11, removed environmentally sensitive areas (ESAs) as a SUSMP category from the LA Municipal Storm Water Permit because it was poorly defined, lacked a size threshold, and was not fully discussed by interested persons. However, the order did allow for this category to be considered in future permits. Current regulation of ESAs does not necessarily relate to discharges from development within or directly adjacent to ESAs. Nor is it clear that these regulations relate to water quality. ESAs were included in the San Diego Municipal permit that received extensive public comments. The Tentative Order includes size threshold limits for development within and adjacent to ESAs and defines ESAs categories.

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F.1	F.1.b.2.c	May we have copies of the calculations used to determine that the average 24-hour 85th percentile storm for Orange County is 0.8 inch?	Groupable? The calculations are listed in Attachment C of the Draft Staff Report for SUSMPs and Numeric Sizing Criteria for Best Management Practices
F.2	F.2.j	Since San Diego has had a storm water permit for a few months, are there model JURMPs, local ordinances for implementation and an educational training program that have been approved by the Regional Board and can be used as a sample for communities to use as a good example or sample model to be tailored to meet a local municipality requirement? If not available yet, when is their deadline?	Groupable? The San Diego Copermittees (under Order 2001-01) have until February 2002 to implement their JURMPs. Model components are currently being developed, and some of these may be available from the County of San Diego's web site. Additionally, when the San Diego Copermittees submit to the Regional Board their JURMPs, these will be available for public review from our office.
F.3		Must cities (or other copermittees) implement grease interceptor monitoring, permitting, and inspection programs?	Groupable? The Tentative Permit allows each Copermittee to designate BMPs for High Priority commercial activities.
F.3	F.3	Follow-up: response to question about City's land use authority over existing residential pertained only to "changes" i.e., "redevelopment." What land use authority does City have to require BMP retrofits on existing residential development that is not being redeveloped? Does permit require structural BMP retrofits in this case?	Groupable? Each copermittee has adopted a storm water ordinance that prohibits pollutants from entering the storm drains. The Tentative Permit does not require BMP retrofits on existing residential development, but rather provides copermittees the flexibility to designate BMPs (Best Management Practices) appropriate to residential activities and areas that present high threats to receiving water quality.



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F.3	F.3.a	<p>The proposed program and permit tries to basically prohibit anything into the storm drain system that is not free of pollutants, otherwise the municipality is responsible. In setting up the regulations in 1990 and including a non storm water discharge component, EPA recognized that it was not he intent to prohibit activities associated with human characteristics. That is why certain non-storm water activities were permitted. If certain activities were thought to contain high pollutant levels, then it would be appropriate to require NPDES permit. If the Regional Board is suggesting that existing development and certain non-storm water discharges are highly pollutant, doesn't this require that NPDES permit be obtained by the discharger instead of the municipality? Since section 402 does not allow the discharge of pollutants into waters of the U.S.</p>	<p>Groupable? Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(1) provides that the Copermittees shall prevent all types of illicit discharges into the MS4 except for the non-storm water discharges listed in Prohibition item B.2., provided that these discharges are not found to be a significant source of pollutants. Pursuant to 40 CFR 122.26(d)(2)(iv)(B)(1), those categories of non-storm water discharges need to be prohibited from entering an MS4 if such categories of discharges are identified by the Copermittee as a significant source of pollutants to waters of the United States. The intent of EPA, therefore, was not to require separate NPDES permits for dischargers of the listed activities, but rather for municipalities to address such discharges through the Municipal Storm Water Permit, where necessary.</p>

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F.3	F.3.b.6	In 1988 EPA proposed to require municipalities to enforce and inspect industrial sites as part of the storm water management plan. When the final regulations were issued in 1990, this requirement was omitted. In assessing the change, EPA noted that this would be a tremendous burden that would overwhelm municipalities and is deemed prudent that this component not be required. However, this requirement is not once again being required. And exceeds the requirements of the Federal regulations.	Groupable? Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) provides that each Copermittee must demonstrate that it can control "through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity." These ordinances must be applied at all industrial sites to ensure that pollutant discharges to the MS4 are reduced to the maximum extent practicable and permit requirements are met. Furthermore, 40 CFR 122.26(d)(2)(iv)(C)(1) requires that municipalities "identify priorities and procedures for inspections and establishing and implementing control measures..." for discharges from industrial sites that the municipality determines are contributing a substantial pollutant loading to the MS4. Regarding enforcement at industrial sites, the US EPA further states "The municipality, as a permittee, is responsible for compliance with its permit and must have authority to implement the conditions in its permit. To comply with its permit, a municipality must have the authority to hold dischargers accountable for their contributions to separate storm sewers" (1992).

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F.3	F.3.b.7	What does "necessary to maintain compliance with this order" mean? Municipalities do not have the same power that the Regional Board has with respect to industrial sites.	<p>Groupable? Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) provides that each Copermittee must demonstrate that it can control "through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity." These ordinances must be applied at all industrial sites to ensure that pollutant discharges to the MS4 are reduced to the maximum extent practicable and permit requirements are met. To this effect, the US EPA "recommends that municipal applicants incorporate a provision in the proposed management program that allows the municipality to require priority industrial facilities to implement the controls necessary for the municipality to meet its permit responsibilities" (1992). Regarding enforcement at industrial sites, the US EPA further states "The municipality, as a permittee, is responsible for compliance with its permit and must have authority to implement the conditions in its permit. To comply with its permit, a municipality must have the authority to hold dischargers accountable for their contributions to separate storm sewers.</p>
Finding 11	Finding 11	Paragraph 11 "Best Management Practices" recognizes constructed wetlands as a BMP. In a developed city, stormwater will have to be transported to scarce lands where wetlands are developed. Will you allow "polluted" urban runoff into a storm drain in order to treat it at a wetland before it goes to a regional receiving water?	<p>Groupable? The Tentative Order allows structural treatment BMPs (constructed wetlands) to be shared by multiple developments. The Tentative Order also requires, however, that the Copermittees prohibit the discharge of pollutants into and from the MS4 that cause or threaten to cause a condition of pollution, contamination, or nuisance. The Tentative Order does not permit the use of receiving waters for the conveyance of polluted runoff. Provided receiving waters are not used to convey untreated stormwater and sufficient source control BMPs are used, the proposed structural BMP would likely meet MEP.</p>

Section	Subsection	Specific Comment	Comment Response
Finding 17	Finding 17	How do municipalities "profit" from their land use decisions? Are you suggesting that the municipalities are collecting revenue from these developments in excess of costs? (I.e. "surpluses.")	<p>Groupable? Since the Copermittees permit, authorize, and realize benefits from urban development within their jurisdictions, Tentative Order No. 2001-193 holds the Copermittees responsible for the short and long-term water quality consequences of their land use decisions. "Profit" in this case refers to benefitting, financial or otherwise, from land use decisions. Municipalities retain land use authority for the purpose of realizing benefits, financial or otherwise, from decisions to urbanize. Furthermore because water quality degradation is the direct result of the urbanization process, Copermittees must implement (or require others to implement) controls to reduce the flow and pollutants generated from each of the three major phases of urbanization that they authorize; namely the (1) land use planning, (2) construction; and (3) use or existing development phase.</p> <p>While the Copermittees may not "profit" from land development according to the common definition and use of the word, the Copermittees do realize, or intend to realize, net benefits that are not exclusively financial from the residential, commercial, industrial, and other activities proposed by private parties that they authorize within their jurisdiction. Because Copermittees have the land use authority to regulate these activities, which can be a source of pollutants and runoff that impair receiving waters, so the Copermittees must also exercise their legal authority to ensure that the resulting increased pollutant loads and flows do not further degrade receiving waters. Nonetheless, Finding 17 will be revised to use the words "realize benefits" in place of "profit."</p>

Section	Subsection	Specific Comment	Comment Response
Finding 2	Finding 2	How did you determine that the stormwater component of urban runoff is a waste in and of itself.	Groupable? The legal definition of “waste” can be found in California Water Code (CWC) section 13050(d), which states “‘Waste’ includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.” Numerous studies, including those conducted within the jurisdictions of the copermittees have demonstrated that the stormwater, or wet-weather, component of urban runoff carries pollutants derived from human habitation through the MS4 into receiving waters.
Finding 24	Finding 24	What is the Board's definition of the frequency of "routine inspections"?	<p>Groupable? The permit defines the minimum frequency of inspections required for all construction sites based on high, medium, and low threat to water quality. Under existing development, minimum frequency of inspections is defined for high threat municipal and industrial sites. However, Copermittees are given discretion in establishing frequency of inspections for all medium and low threat sites as well as high threat commercial sites.</p> <p>The Tentative Order defines minimum inspection frequencies for these categories of activity:</p> <ol style="list-style-type: none"> <li>1. Construction - Section F.2.g;</li> <li>2. High priority municipal existing development - Section F.3.a(7); and</li> <li>3. High priority industrial sites - Section F.3.b(6).</li> </ol> <p>Copermittees are given discretion in establishing frequency of inspections for all medium and low priority municipal and industrial sites, as well as all commercial sites.</p>
Finding 41	Finding 41	In Finding #41, the Tentative Order effectively dismisses the DAMP, which is the product of ten years of cooperative and proactive work by the Orange County municipalities. Does the staff understand that the DAMP is actually implemented in each of the municipal jurisdictions?	Groupable? ✓

Section	Subsection	Specific Comment	Comment Response
Finding 41	Finding 41	On what basis did you conclude that implementation of the proposed DAMP would be inadequate to reduce pollutants in urban runoff to the MEP?	Groupable? ✓
Finding 41	Finding 41	In the draft Technical Report for Finding #41, the Tentative Order states that a "staff level review" determined that the DAMP would not meet MEP. How was this analysis conducted and what were the criteria? When are the Permittees going to be able to review the analysis that was conducted and provide comments on it?	Groupable? ✓
Finding 41	Finding 41	Why did the staff develop the Tentative order without first completing its review and comment on the DAMP and give the Copermitees an opportunity to discuss needed improvements to the DAMP before issuing the Tentative Order?	Groupable? ✓
Finding 9	Finding 9	What is the beneficial use of the receiving waters? Aliso Creek, especially.	Groupable? The beneficial uses of receiving waters subject to this Order can be found in Chapter 2 of the Water Quality Control Plan for the San Diego Basin (Basin Plan), available from the Regional Board office and on-line at <a href="http://www.swrcb.ca.gov/rwqcb9/">http://www.swrcb.ca.gov/rwqcb9/</a> . The designated beneficial uses for the inland waters of Aliso Creek are agriculture (AGR), non-contact recreation (REC 2), warm freshwater habitat (WARM), and wildlife habitat (WILD), with contact recreation (REC 1) as a potential beneficial use. In addition, designated beneficial uses for the Aliso Creek mouth are REC 1, REC 2, WILD, RARE (rare, threatened, or endangered species), and MAR (marine habitat). Finally, designated beneficial uses for the ground waters in the Aliso Creek watershed include AGR, and MUN (municipal and domestic supply).
Findings		For water utilities that already report directly to RWQCB staff with information and data for dewatering and construction activities, will they now report to affected copermitees and/or both.	Groupable? The Tentative Order neither requires nor prohibits Copermitees to collect such information. However, agencies or organizations conducting such dewatering activities that discharge into MS4s may be required by the Copermitees to implement BMPs to reduce pollutants in the discharges to the MEP.

Section	Subsection	Specific Comment	Comment Response
Findings	Finding 41	If the DAMP is just incomplete and not inadequate as stated by Board staff, then finding #41 should be revised and the Tentative Order should recognize those elements that are currently being implemented and are effective. The DAMP should be revised not thrown out of the process.	Groupable? ✓
H	H	The above referenced section states that the Permittees need to each submit a JURMP to the Principal. This is unnecessary. Since the JURMP closely reflects the current DAMP program elements it would be more efficient to update the DAMP to ensure that it contains the additional elements. Why has staff not considered this?	<p>Groupable? The Tentative Order contains requirements of the Copermittees that must be implemented both individually and collectively. The Copermittees have the discretion to revise the proposed DAMP to meet or exceed the requirements of the Jurisdictional Urban Runoff Management Program (Jurisdictional URMP) sections of the Tentative Order. However, to the extent that the Copermittees revise the DAMP or develop a model Jurisdictional URMP, the programs implemented must satisfy or exceed the requirements specified in the Tentative Order and must be refined to reflect conditions, land use activities, and urban runoff management issues specific to each jurisdiction.</p> <p>The compliance of each Copermittee with the Tentative Order will be assessed, in part, on the implementation of the provisions of its Jurisdictional URMP Document. Thus, it is necessary that each Copermittee have a separate Jurisdictional URMP Document specifically tailored to the conditions, land use activities, and urban runoff management issues within its jurisdiction?</p>
J		The above referenced section states that the Permittees need to each submit a WURMP to the Principal. This is unnecessary. Since the DAMP currently has a focus on developing watershed specific chapters that focus in on pollutants of concern, what not simply update the DAMP to include a chapter on each of the watersheds that incorporate the elements of the WURMP program that is in the tentative order?	Groupable? Most of the significant elements of the DAMP have been implemented on a countywide level rather than an actual watershed basis. The Tentative Order therefore requires development of a WURMP specific to the six hydrologic units within the San Juan Watershed Management Area. The WURMP will provide for more effective and focused receiving water quality protection.

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Multiple	Multiple	<p>The permit seems to prescribe a very detailed storm water program that goes beyond the measures outlined in section 122.26 for storm water management programs. In setting the NPDES municipal storm water regulations in 1990, EPA indicated that the permits would be flexible and coordinated with the discharger. This process seems to have been omitted in the development of this permit since numerous discussions with the San Diego region Board staff failed to achieve meaningful changes in the drafting of this permit from that issued to the county and cities of San Diego.</p>	Groupable? ✓
Multiple	Multiple	<p>In previous hearings Board staff has indicated that a prescriptive permit was needed because the Permittees lacked a cohesive and implementable storm water management plan. However, this is not the case in Orange County and the same prescriptive permit is being issued even though a storm water management plan has been in existence since 1993.</p>	Groupable? ✓
P	P	<p>How will the Receiving Waters Monitoring Program data tie into the new Statewide General Permit for Construction Activities monitoring standards applicable to general permittees.</p>	<p>Groupable? The monitoring that will be conducted by entities permitted under the General Statewide Construction Storm Water Permit is site specific. The Receiving Waters Monitoring Program that will be implemented under the Tentative Order will assess the impact of urban runoff, which may include runoff from construction sites, on receiving waters. The Copermitees may individually or collectively review and consider any data generated from water quality monitoring of construction site discharges in the implementation of their programs.</p>
Q	Q	<p>The proposed permit has numerous new components/programs that must be developed and implemented (some within 180 or 365 days). Some of these programs will require municipalities to establish new funding sources and hire additional staff, which will be extremely difficult within the prescribed timelines. Is it possible to extend the completion dates of items required within the first 12 months by an additional 12 months?</p>	<p>Groupable? The development and implementation of the Tentative Order are realistic and achievable.</p>



# Grouped Comments From Workshop I

Section	Subsection	Groupable Comment	Response to groupable comment
Findings		<p>On what basis did you conclude that implementation of the proposed DAMP would be inadequate to reduce pollutants in urban runoff to the MEP? How was this analysis conducted and what were the criteria? When are the Permittees going to be able to review the analysis that was conducted and provide comments on it? In Finding #41, the Tentative Order effectively dismisses the DAMP, which is the product of ten years of cooperative and proactive work by the Orange County municipalities. Does the staff understand that the DAMP is actually implemented in each of the municipal jurisdictions? If the DAMP is just incomplete and not inadequate as stated by Board staff, then finding #41 should be revised and the Tentative Order should recognize those elements that are currently being implemented and are effective. The DAMP should be revised not thrown out of the process.</p> <p>Why did the staff develop the Tentative order without first completing its review and comment on the DAMP and give the Copermittees an opportunity to discuss needed improvements to the DAMP before issuing the Tentative Order?</p>	<p>The DAMP was reviewed with respect to the preparation of a template Tentative Order under development that was intended by the RWQCB to be revised as necessary and applied in each of the three counties in the San Diego Region. Part of the rationale for developing a template Tentative Order was to prepare San Diego Region Municipal Storm Water NPDES Copermittees in the three counties for the eventual issuance of these NPDES Permits and Waste Discharge Requirements on a watershed basis rather than a county basis while ensuring regional consistency within the San Diego Region. During workshops and public meetings conducted during adoption process for the first of these permits (Order No. 2001-01), the RWQCB repeatedly affirmed this intention. Some of the preliminary results of that review were communicated to the Copermittees in February and March of 2001. The basis for concluding that the implementation of the proposed DAMP as submitted would be inadequate to reduce pollutants in urban runoff to the MEP was based primarily on the ongoing exceedances of receiving water quality objectives reported by the Orange County Copermittees under Order No. 96-03 and the overall lack of specificity of the Report of Waste Discharge and the proposed DAMP. Although the DAMP provides a general urban runoff management approach, the 69 performance commitments and the revision of the proposed DAMP did not satisfy the RWQCB requirements for specific, detailed program components to be implemented at both a Jurisdictional as well as Watershed level. For example, Section 1.3 of the DAMP identifies public education as a central program component and much of the DAMP in fact specifically addresses educational efforts. Educational efforts alone, however, are not likely to achieve significant reductions of pollutants in urban runoff. The Tentative Order provides the additional detail for pollution prevention measures, source identification and elimination/control, inspection frequencies, education, enforcement, and structural and non structural BMPs that be required under the Tentative Order to achieve MEP.</p> <p>It is the understanding of the RWQCB that the DAMP is implemented by each Copermittee. It was not the intent of the RWQCB that the DAMP be dismissed, but rather to provide in the Tentative Order language the level of specificity and the detail of to develop implementable and enforceable measures and evaluations of existing and proposed BMPs necessary to achieve MEP. The Copermittees have the discretion to revise the proposed DAMP as necessary to comply with the Jurisdictional and Watershed level requirements of the Tentative Order. Section J of the Tentative Order directs the Copermittees to review and revise as necessary the proposed DAMP to satisfy the requirements of the Watershed Urban Runoff Management Program. To the extent that the Copermittees prepare a model Jurisdictional Urban Runoff Management Program (Jurisdictional URMP) or revise the proposed DAMP to satisfy the Jurisdictional URMP requirements, each Copermittees will be required to further refine the model or DAMP provisions to reflect the conditions, land use activities, and sources of pollutants in urban runoff within its jurisdiction and submit that as its Jurisdictional</p>

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			<p>URMP Document. The Tentative Order provides minimum requirements that must be met by the Copermittees. It is each Copermittee's responsibility to ensure that the DAMP, if implemented within its jurisdiction, meets or exceeds these requirements.</p>
Findings	Is the Board trying to establish that the copermittees should have legal authority to enforce the General Permits? If so, this appears to be in conflict with Finding 22		<p>The Copermittees are not responsible for enforcing or overseeing the General Statewide Industrial or Construction Permits. The SDRWQCB will oversee and enforce the General Statewide Industrial and Construction Permits. The Copermittees are however, responsible for enforcing their ordinances that implement the Tentative Order, including the prohibitions against illicit discharges. In some cases, the Copermittees may be required to implement or require the implementation of BMPs at construction or industrial sites that exceed the minimum requirements of the General Statewide Industrial or Construction Permits in order to achieve compliance with the requirements of the Tentative Order. USEPA supports this approach, clearly placing responsibility for the control of discharges from construction and industrial sites with municipalities. The USEPA notes in the preamble to the Storm Water Regulations that municipalities are in the best place to enforce compliance with storm water discharge requirements:</p> <p>“Because storm water from industrial facilities may be a major contributor of pollutants to MS4s, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program...The CWA provides that permits for municipal separate storm sewers shall require municipalities to reduce pollutants to the maximum extent practicable. Permits issued to municipalities for discharges from municipal separate storm sewers will reflect terms, specified controls, and programs that achieve that goal.”</p> <p>As noted in the Fact Sheet/Technical Report, the USEPA felt it so important to control the discharge of pollutants from construction and industry that it established a double system of regulation over construction and industrial sites. Two parallel regulatory systems were established with the same common objective of keeping pollutants from construction and industrial sites out of the MS4. A structure was created where local governments must enforce their local ordinances and permits as required under their municipal storm water permits, while the SDRWQCB (state) must enforce its statewide general construction and industrial storm water permits. The two regulatory systems were designed to complement and support each other in the shared goal of minimizing pollutant discharges in runoff from construction and industrial sites.</p> <p>Local governments have regulatory authority over the majority of construction and industrial sites since they issue the development and land use permits for the sites. In other words, the Copermittees are responsible for the water quality consequences of their planning, construction, and land use decisions.</p> <p>Regarding construction sites, USEPA also places enforcement responsibility on municipalities, requiring small municipalities to develop and implement “[a]n ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance [...]” (40 CFR 122.34(b)(4)(ii)(A)) (emphasis added). In its guidance for the Phase II regulations, US EPA goes on to support</p>

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increased municipality responsibility, stating “Even though all construction sites that disturb more than one acre are covered nationally by an NPDES storm water permit, the construction site runoff control minimum measure for the small MS4 program is needed to induce more localized site regulation and enforcement efforts, and to enable operators of regulated small MS4s to more effectively control construction site discharges into their MS4s.” While these above citations refer to small municipalities under Phase II of the NPDES program, USEPA recommendations to small municipalities are applicable to larger municipalities such as the Copermittees, due to the typically more serious water quality concerns attributed to such larger municipalities.

The language of the Tentative Order has been revised to carefully describe the requirements of the Tentative Order with regard to the dual regulation of construction and industrial sites as discussed above. With the recent addition of resources and staff from budget augmentations in several programs, including storm water, the SDRWQCB is vigorously administering and enforcing the General Statewide Industrial and Construction permits. The language of Finding 24 of the Tentative Order was revised to remove all discussion of what constitutes “good faith” in enforcing local legal authority. Furthermore, the Tentative Order does not “reward” Copermittees that enforce its storm water ordinances that implement the Tentative Order. Rather, the Section F.2.g.2 offers the Copermittees the discretion to voluntarily use the requirements of the General Construction Permit to implement and enforce its own storm water ordinances. Nor does Section F.2.h “write” the Copermittees Storm Water Ordinances or even specifies what types of penalties and fines must be included. Section F.2.h only requires that the Copermittees update and enforce their ordinances and is not an infringement on the Copermittees legislative authority or its police powers. The SDRWQCB will enforce the General Statewide Construction Permit; the Copermittees are required to enforce their own storm water ordinances.

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Multiple	Multiple	<p>The permit seems to prescribe a very detailed storm water program that goes beyond the measures outlined in section 122.26 for storm water management programs. In setting the NPDES municipal storm water regulations in 1990, EPA indicated that the permits would be flexible and coordinated with the discharger. This process seems to have been omitted in the development of this permit since numerous discussions with the San Diego region Board staff failed to achieve meaningful changes in the drafting of this permit from that issued to the county and cities of San Diego.</p> <p>In previous hearings Board staff has indicated that a prescriptive permit was needed because the Permittees lacked a cohesive and implementable storm water management plan. However, this is not the case in Orange County and the same prescriptive permit is being issued even though a storm water management plan has been in existence since 1993.</p>	<p>The requirements in the Tentative Order are based on the Federal NPDES regulations and USEPA and SWRCB guidance. Where the Tentative Order is more specific than the Federal NPDES regulations, it is based on USEPA and SWRCB guidance. The SDRWQCB has authority to include more specific requirements than the Federal regulations under CWA section 402(p)(3)(B)(iii) and CWC section 13377. USEPA supports the approach of increasingly detailed storm water permits, stating "The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards" (USEPA, 1996).</p> <p>The Tentative Order is not in violation of CWC section 13360. CWA section 402(p)(3)(B)(iii) provides that municipal storm water permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." To meet this requirement of the CWA, the Tentative Order requires the implementation of BMPs, as required under Federal NPDES regulation 40 CFR 122.44(k). While the Tentative Order includes requirements for widespread BMP implementation, it does not require use of any particular BMPs. The Tentative Order actually encourages implementation of combinations of BMPs, and further does not preclude any particular BMPs or other means of compliance. A permit which allows for seemingly infinite means for achieving compliance does not 'specify the design or manner of compliance' in violation of California Water Code section 13360.</p> <p>The specified programs included in the Tentative Order must be implemented by the Copermittees in order to carry out the CWA requirements. Any specified programs in the Tentative Order are made all the more necessary by the exclusion of numerical effluent limits from the permit. Reliance on BMPs as opposed to numerical effluent limits requires specification of those programs that are relied upon to reduce pollution.</p> <p>With respect to the need for flexibility and coordination, the Tentative Order provides a framework within which the Copermittees may develop the programs, activities, and measures that will satisfy or exceed the requirements of the Tentative Order. Wherever possible, the RWQCB has attempted to provide discretion and flexibility to the Copermittees. As discussed during Workshop I, it was the intent of the RWQCB to develop a template Tentative Order that would be revised as necessary and issued throughout the San Diego Region. This template contains the framework for the minimum requirements considered necessary to achieve MEP and was intended to ensure regional consistency throughout the San Diego Region when these NPDES Permits and Waste Discharge Requirements are issued on a watershed basis in this region.</p> <p>Many of the requirements of the Tentative Order are already being implemented at some level by the Copermittees under the DAMP developed under the First and Second Term Permits. Because the Tentative Order is issued to each Copermittee, each Copermittee must have a program to</p>

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			<p>manage urban runoff within its jurisdiction. The program must be tailored to address the specific urban runoff management issues within its jurisdiction. The Copermitees have the discretion to revise the DAMP or develop a model Jurisdictional Urban Runoff Management Program (Jurisdictional URMP) to meet or exceed the requirements of the Tentative Order. Furthermore, the Copermitees are directed to review and revise as necessary the proposed DAMP submitted in September 2000 to address the requirements of the Watershed Urban Runoff Management Program. In addition, the Program Management section of the Tentative Order requires the Copermitees to implement the Program Management component of the DAMP. Finally, the adoption process for the Tentative Order is intended to receive comments and identify issues in the language of the Tentative Order that can be addressed through changes in the Tentative Order to enable it to be more readily implemented and enforced.</p>

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Attachment	Attachment	<p>Why is the Receiving Water Monitoring element (Attachment B) to be reported on as a separate report and the Dry Weather Monitoring element (Attachment E) to be reported on within the annual status report. This is very confusing. It is suggested that all water quality monitoring data and analyses be included in the annual status report in one section so that data is kept together and analyzed holistically instead of breaking it up into separate elements where some opportunities for more through analysis may, in fact be lost.</p> <p>Attachment E states that the program needs to detect and eliminate illicit connections and illegal discharges. The Permittees have already completed an extensive program to eliminate illicit connections and are now in a maintenance mode whereby the connections are dealt with when that are found through the channel maintenance program. In fact, very few illicit connections are found and most of them are pool drains. This element should be revised and incorporated into our 99-04 plan to better reflect the current state of our program.</p> <p>Why does the tentative order continually refer to the fact that each Permittee must conduct monitoring? If they so choose the Permittees should be able to pool their resources in order to collectively benefit from a larger program.</p> <p>Why are the Permittees being required to implement a field screening program that they already conducted and completed during the first and second term permits? This program was discontinued due to the fact that the 89 stations that were sampled over the course of 6-7 years showed only a few incidents of chronic or acute illegal discharges. Instead the Permittees opted to revise this program element and tie it directly into the water pollution database in order to better find illegal discharges.</p>	<p>The program to detect and eliminate illicit connections and illegal discharges should be an on-going process that will ensure future problems are identified and addressed. As land use activities change, the potential for illicit discharges and illegal connections also change. In particular, the Copermittees are required to develop a flexible, responsive dry weather monitoring program designed to detect the highly episodic, short term illicit discharges that might escape detection in a monitoring program that is conducted at a countywide level. A review of recently submitted enforcement letters indicates numerous small illicit discharges are in fact being identified at a jurisdictional level through frequent inspections. The monitoring requirements of Attachment E are intended to provide the Copermittees with an additional jurisdictional level tool to identify and eliminate illicit discharges.</p> <p>The Receiving Waters Monitoring Program will be conducted collectively by the Copermittees and addresses only receiving waters. The Dry Weather Monitoring Program will be conducted individually by each Copermittee as part of their Jurisdictional Urban Runoff Management Program. Furthermore, each Copermittee is expected to develop a Dry Weather Monitoring Program tailored to the conditions, land use activities, and urban runoff management issues specific to its jurisdiction. The program should be designed to emphasize frequent, geographically widespread inspections, field screening and analytical monitoring to detect illicit discharges and illegal connections. The Dry Weather Monitoring Program should be flexible. Thus, each monitoring program are to be conducted and reported separately under the Tentative Order. The Copermittees, however, have the discretion to collate the data and analyze it holistically. This approach is supported by the requirement that each Copermittee shall submit their Dry Weather Monitoring data annually to the Principle Permittee.</p>